



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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December 6, 1973

AG 00439

The Honorable Rowland F. Kirks
Director, Administrative Office of the
United States Courts

Dear Mr. Kirks:

Further reference is made to your letter of June 7, 1973, requesting a decision as to the appropriate fee, if any, that should be paid to Federal employees in the Washington, D. C. metropolitan area who served as jurors in the United States District Court for the District of Columbia during the afternoon of January 19, 1973, when the half day holiday proclaimed by the President in Executive Order 11696, January 17, 1973 (38 Fed. Reg. 1722, January 18, 1973) was in effect.

Section 1871 of title 28, United States Code, governs fees to be paid jurors serving in United States Courts and provides in part as follows:

§ 1871. Fees

"Grand and petit jurors in district courts or before United States commissioners shall receive the following fees, except as otherwise expressly provided by law:

"For actual attendance at the place of trial or hearing and for the time necessarily occupied in going to and from such place at the beginning and end of such service or at any time during the same, \$20 per day, * * *"

However, as a general rule, Federal employees are not entitled to jury fees while on court leave for the purpose of performing jury service in a court of the United States or the District of Columbia under provisions of 5 U.S.C. 5537, quoted in part below:

§ 5537. Fees for jury and witness service

"(a) An employee as defined by section 2105 of this title (except an individual whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives) or an individual employed by the government of the District of Columbia may not receive fees for service—

[Appropriate Fee for Federal Employees on Jury Duty
During Half Day Holiday]

PUBLISHED DECISION
53 Comp. Gen.

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"(1) as a juror in a court of the United States or the District of Columbia * * *."

In construing this statute we have consistently held that the wording " * * * may not receive fees for service—(1) as a juror in a court of the United States * * *" prohibits payment to an employee of the United States for jury duty for those days on which he may perform jury service in the United States Courts while in a pay status in his civilian position. 20 Comp. Gen. 276 (1940).

However, we have held that fees received for jury service in State courts on a holiday falling within the employee's basic tour of duty may be retained by the employee, provided that, had he not been on jury duty he would have been excused from his regular duties on the holiday. 27 Comp. Gen. 293 (1947). A similar determination was made with respect to employees serving as jurors in courts of the United States or the District of Columbia in 45 Comp. Gen. 251 (1965). Accordingly, jurors serving in courts of the United States or the District of Columbia may be paid the applicable jury fee when serving on holidays when they are not excused from duty to perform such service. With respect to an employee who performs jury service in a court of the United States or of the District of Columbia after his hours of duty so that no court leave is involved, we have held that such an employee is entitled to payment of jury fees. 36 Comp. Gen. 378 (1956).

Until now, we have followed the rule that for a Federal employee to be entitled to a jury fee for Federal or District of Columbia jury service on a given day, the period of jury duty must not overlap any part of the employee's duty status period since there is no provision in the statute providing for prorating such fee. 36 Comp. Gen. 378, *supra*, and 52 *id.* 626 (1973). After fully considering the matter we now are of the opinion that our prior decisions precluding the prorating of jury fees when employees are excused from duty for any part of the day on which they serve as jurors in Federal or District of Columbia courts, is more restrictive than required under the controlling statutes. While the prorating of jury fees may cause some administrative inconveniences we foresee no grave consequences resulting from the prorating of fees that would be inconsistent with the purpose and intent of the jury fees statutes. If, as we held in prior decisions, a Federal employee is entitled to the full jury fee when the entire period of jury duty falls outside the employee's work hours on any given day, it is just as logical and consistent with the controlling statutes to permit prorating of jury fees in appropriate

B-70371

circumstances. Thus, it is our present view that for each hour of jury service performed in a court of the United States or the District of Columbia outside of the hours of duty an employee otherwise worked or, but for jury service, would have been required to work on a given day, he is entitled to a proportionate part of the jury fee for that day. For instance, when an employee is excused for the full 8-hour workday while on jury duty, he would be entitled to a pro rata payment of the jury fee to the extent that his jury service lasted in excess of 8 hours computed on the basis of full hours. Thus, an employee serving for 10 hours would be entitled to a pro rata jury fee based on two-tenths (or one-fifth) of the full fee, if he served 12 hours, a pro rata fee based on four-twelfths (or one-third) etc. In circumstances where the employee is not assigned to a regular 8-hour day or when he actually works part of the day, similar determinations of the pro rata jury fee will be made. Thus, employees scheduled to work 4 hours on January 19, 1973, but excused because of jury service would be entitled to a jury fee based on the relationship of the number of hours of jury service performed in excess of 4 to the total jury service on that day. If jury service lasted 6 hours, the employee would be entitled to one-third of the jury fee, and if it lasted 8 hours, one-half of the jury fee.

Accordingly, in the instant case the jury fees for the employees involved may be prorated and paid in the proportion that the number of hours served on jury duty after the commencement of the one-half day holiday bears to the total number of hours of jury duty performed on that day.

Decisions cited above in conflict with the principle stated herein are to be regarded as no longer controlling and this decision will govern in the case of jury fees paid for January 19, 1973, to employees in the Washington, D.C. metropolitan area who were given a half holiday on that day and to all future cases involving jury service in excess of the time the employee was excused on leave.

Sincerely yours,

R.F. KELLER

Deputy - Comptroller General
of the United States